

Rural Housing Service, USDA

§ 3565.51

whether the relationship or association is known to others. Rural Development employees or members of their families may not purchase a Real Estate Owned property, security property from a borrower, or security property at a foreclosure sale.

(d) *Loan closing agent responsibility.* Loan closing agents (or members of their families) who have been involved with a particular property are precluded from purchasing such properties.

(e) *Lender and borrower responsibility.* Lenders, borrowers, and their agents must identify any known relationship or association with a Rural Development employee.

§§ 3565.11–3565.12 [Reserved]

§ 3565.13 Exception authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part, if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

[64 FR 32372, June 16, 1999]

§ 3565.14 Review and appeals.

Whenever RHS makes a decision that is adverse to a lender or a borrower, RHS will provide written notice of such adverse decision and of the right to a USDA National Appeals Division hearing in accordance with 7 CFR part 11 or successor regulations. The lender or borrower may request an informal review with the decision maker and the use of available alternative dispute resolution or mediation programs as a means of resolution of the adverse decision. Any adverse decision, whether appealable or non-appealable may also be reviewed by the next level RHS supervisor. Adverse decisions affecting project tenants or applicants for tenancy will be handled in accordance with 7 CFR part 1944, subpart L or successor regulations.

§ 3565.15 Oversight and monitoring.

The lender, borrower, and all parties involved in any manner with any guarantee under this program must cooperate fully with all oversight and monitoring efforts of the Agency, Office of Inspector General, the U.S. General Accounting Office, and the U.S. Department of Justice or their representatives including making available any records concerning this transaction. This includes the annual eligibility audit and any other oversight or monitoring activities. If the Agency implements a requirement for an electronic transfer of information, the lender and borrower must cooperate fully.

§ 3565.16 [Reserved]

§ 3565.17 Demonstration programs.

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements of a demonstration program. Demonstration programs will be publicized by notices in the FEDERAL REGISTER.

§§ 3565.18–3565.49 [Reserved]

§ 3565.50 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart B—Guarantee Requirements

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an approved lender, the Agency will commit to providing a guarantee for a permanent loan or a combination construction and permanent loan, subject to the availability of funds. The Agency will not guarantee a construction

§ 3565.52

7 CFR Ch. XXXV (1-1-06 Edition)

loan that is not a combination construction and permanent loan.

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the guarantee or assigned the loan, or in which a lender participates or condones. The guarantee will be unenforceable by the lender to the extent any loss is occasioned by a violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of loan funds for purposes other than those authorized by the Agency. The acts in the previous sentence constitute grounds for the refusal to make full payment under the guarantee to the lender, and will not be taken until the Agency gives the lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Regulations, Loan Note Guarantee, or Lender's Agreement; the lender has not cured the acts or omissions within 90 calendar days after such notice; and the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condition of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within a 90 calendar day period, the 90 calendar day cure period automatically shall be extended so long as curative activities are commenced during the 90 calendar day period. At no time shall the curative period extend more than 270 calendar days from the expiration of the original 90 calendar day cure period. When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the lender under

the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the Holder.* The Holder shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the Holder has knowledge of fraud, misrepresentation or misuse of funds when it becomes the Holder or condones or participates in such actions.

(c) *Guarantee percentage and payment.* Both permanent loans and combination construction and permanent loans are eligible for a guaranty subject to the following limitations:

(1) *Permanent loans.* The Agency will issue a permanent loan guarantee after a minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. In either case, the permanent guarantee will be issued when the 2% additional reserve amount is set aside prior to closing the construction loan or the minimum level of occupancy is attained prior to the expiration of the Conditional Commitment, including any extensions thereto. The maximum guarantee payment for a permanent loan will be 90 percent of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in § 3565.452. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee percentage based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the